

THE UNITED STATES AND THE FUTURE OF INTERNATIONAL LAW

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Celebration in Honor of the Appointment of Bernard H. Oxman
to the Richard A. Hausler Chair
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Ms. Weeks, Provost LeBlanc, Dean Lynch, General Counsel Ugalde, distinguished members of the faculty, administration and staff, learned judges and members of the bar, esteemed students, alumni and guests, distinguished ambassadors, ladies and gentlemen:

It is difficult to imagine what I have done, or might do, to deserve the extraordinary introduction we have just heard. Patrick, thank you very much for that tour de force.

It is not possible for me to express the humility with which I assume this chair, established by the generous gifts of alumni, faculty, students, and friends of the University of Miami School of Law, to honor our beloved teacher and colleague, Richard Hausler.

I shall always remember how Professor Hausler took me under his wing when I first arrived in Miami, and how he continued to watch over me from then on: sometimes approvingly, sometimes with unnerving silence.

I am delighted that Dean Jeanette Hausler and my former student, Philomene Hausler, are able to be with us today.

I am gratified that Judge Gisela Cardonne Ely is here to honor the first occupant of this chair, the great constitutional scholar and colleague and friend, John Hart Ely.

It gives me particular pleasure to welcome family and friends who traveled great distances to help celebrate this occasion. Thank you all very much.

Before proceeding, I would like to convey special thanks to Marta Weeks, who chairs the Board of Trustees, and to Provost Thomas LeBlanc, the chief academic officer of the University of Miami, for taking time from their busy schedules to join us; their presence here gives tangible expression to their support for the law school and their desire to help secure a bright future for it.

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The subject I have chosen for my lecture today is the United States and the Future of International Law. In the brief time available, I propose to take a look at this broad topic from a particular perspective.

I begin with two propositions.

The first is that, in a world of increasing interconnections between peoples, and between people, a robust international legal system, a system that is responsive to our needs and those of others, is central to the protection and promotion of American security, economic, environmental, and other interests and values.

The second is that the constituent elements of the international legal system, and our engagement with that system, are more fragile than many of us would prefer to believe.

To the extent that these propositions are true, a difficult tension emerges.

When people think about international law, it is usually in the context of specific substantive matters, be it security, trade, investment, intellectual property, taxation, environmental protection, child custody, human rights, or transport and communications, to cite but a few examples. From that perspective, international law is a resource to be used to further substantive objectives by endowing certain propositions with legitimacy and a sense of obligation.

The tension arises from the fact that this may lead one's opponents to challenge not only the substantive legal argument, but the legitimacy and obligatory character of key elements of the international legal system itself.

We ignore this problem at our peril. Many of us have interests in invoking the international legal system to achieve substantive goals. But we also have interests in the health of the international legal system as a whole and America's engagement with that system. Therefore we must constantly balance our interest in using international law to advance particular substantive objectives, with our interest in building, and engaging with, a more robust and resilient international legal system over time.

I call this the librarian's dilemma. You may be interested to know how I chanced upon this metaphor. Some years ago I heard a talk by the

then general counsel of the CIA – she has since been promoted to law school dean. Her topic was the use of intelligence to support multilateral arms control efforts. As you might expect, she took some pains to describe the tension between the interest in making current use of intelligence for present purposes, and the interest in safeguarding intelligence and limiting its disclosure in order to protect the future utility of its sources. During the question and answer period that followed, a prominent law professor began by saying, “You sound like a librarian.”

The fragility of the international legal system, and America’s engagement with that system, is often masked by the remarkable proliferation of functional and regional regimes in international law since the waning days of World War II. This proliferation is reflected in the programs and curricula of law schools, and in the specialized substantive communities we form with others of similar interests and perspectives on the web and at professional meetings. What we must bear in mind -- to paraphrase one account of Charles de Gaulle’s description of treaties -- is that each of these specialized systems is a like a rose: it lasts as long as it lasts.

In surveying all this activity, it is difficult, at least outside courts and tribunals, to discern much concern about nurturing the health – if you will the authority – of the international legal system as a whole and America’s engagement with that system. When Richard Nixon took office as president, Daniel Patrick Moynihan privately warned him that abrupt changes in the social welfare system could prejudice the legitimacy of the state. Where does international law find such constraining advice? How do we nurture people willing and able to nurture the system itself?

To many people, the mere mention of international law evokes emotions we might associate with things that are exotic. Their reactions, at least in some measure, are different from the response to the idea of law as such.

It was not always thus. Those who created our country were at ease with the law of nations, as international law was then styled. They were familiar with the writings of the founders of modern international law. They understood the role of the idea of the law of nature in the development of the law of nations.

Let us consider the opening sentence of our Declaration of Independence:

When, in the course of human events, it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

The reference to the laws of nature and of nature's God reflect an 18th century legal education unburdened by the radical positivism to come. But if we attempt to separate the basic ideas from the style of legal reasoning, we can discern some interesting thoughts.

The object of the Declaration is to assume the separate and equal station among the other nations of the earth to which a people are entitled by law. The effect is made clear in the concluding paragraph of the Declaration of Independence, where it asserts that the political bonds tying the united colonies to Great Britain are dissolved, and thus "as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do."

As we know, this ambitious assertion of right under law was not universally welcomed at the time. Still, the legal principle invoked in the Declaration played a role in facilitating its success, ultimately even in England.

The important lesson that emerges is that the founders of this country invoked the international legal order to justify the independence of the country. They did so in terms designed to have universal appeal – at least to those able to think beyond the imperatives of empire.

Thus the decent respect to the opinions of mankind to which the Declaration adverts is no mere matter of courtesy. Rather the need to declare the causes which impel the colonies to separate from Great Britain flows directly from the position of universal legal principle on which the Declaration rests.

To understand how prescient and influential this position of legal principle was, we need only consider that 169 years later, the opening articles of the Charter of the United Nations declared that the

“Organization is based on the principle of the sovereign equality of all its Members” and made express reference to “the principle of equal rights and self-determination of peoples.”

The rationale for self-determination can of course be traced back to the most famous passage of the Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

This passage appears immediately after the first sentence of the Declaration of Independence. It is the beginning of the elaboration of causes that impel the colonies to separate from Great Britain. Its object is to root the bill of particulars that follows in a principled context. And that foundation is that the consent of the governed is the source of legitimate governmental authority, and that the object of government is to secure inalienable human rights.

It would seem that the drafters of the Declaration were reaching outside the confines of international law or even law itself to political philosophy – in particular that of the Enlightenment – to establish the standards against which the Declaration would proceed to measure British rule. In practical terms, their audience beyond the United States was comprised largely of educated Europeans who might respond favorably to a revolution rooted in ideals they shared.

But the broader reality is that the Declaration of Independence is no mere demand for admission to the international system as it existed. It is that. But it is more. The justification for admission is itself transformative. The Declaration of Independence reveals a disposition both to rely on international law and to reshape it. That duality has since characterized the noblest moments of America’s engagement with international law.

If the Declaration of Independence is a call to arms, the Constitution is a call to order. The Constitution’s audience is internal. Its concern for the

international system relates largely to the internal allocation of powers to engage with that system. But once again we encounter a sophisticated level of knowledge about the law of nations, and evident comfort with that law. As I had the occasion to observe at a symposium at the Law School on John Hart Ely's book on war powers:

The express purpose of the Declaration of Independence was to establish at least one new independent state as part of the international community of states. The Constitution makes clear that it is the national government that will function as part of that political community in war and in peace. The Constitution expressly identifies the major elements of the international system: it acknowledges the existence of kings, princes, foreign states and their ambassadors and public ministers as well as our own; it provides for enforcing the law of nations; it speaks not only of war and declarations of war but of international treaties, alliances, confederations, agreements, and compacts.

The U.S. Supreme Court under Chief Justice John Marshall was knowledgeable about and comfortable with the law of nations. Marshall's opinion in *The Schooner Exchange* is a masterpiece of analysis of the underpinnings of the international law of sovereign immunity. In the case of *The Schooner Charming Betsy*, Marshall famously wrote for the Court that "an Act of Congress ought never to be construed to violate the law of nations, if any other possible construction remains."

By the end of the 19th century, in deciding in favor of Cuban fishermen in the case of the *Paquete Habana*, a fishing boat seized off Cuba and brought to Key West during the Spanish-American War, the Supreme Court confidently asserted that "International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination."

So what happened? Why is it that Justice Jackson, at the end of World War II, complained that "far too many think of international law as a speculative avocation"? Why is it that, in the *Sabbatino* case in 1964, Justice White's call on the Supreme Court to contribute to the development of the international law of expropriation failed to carry a majority?

After all, accomplished legal thinkers are not afraid to apply their insights to international law. Once I had the occasion to confess to Richard Hausler a certain impatience with some European international law

specialists who had expressed doubt over whether the UN Security Council had the authority to send personnel into an African country to distribute food and forestall mass starvation. Professor Hausler, in agreeing with my view, went beyond my expression of impatience; he set forth a resounding disquisition on the moral foundations of all law worthy of the name.

Still, there is quite evidently a problem in the way many informed Americans perceive international law, at least outside their immediate substantive specialties. There are many factors that may have contributed to this difficulty. Today, I would like to single out two from a broad range of possible culprits.

One is zealotry. The other xenophobia.

Applying either term to specific individuals could be gratuitously insulting; this of course affords me a convenient excuse for failing to identify precisely who, if anyone, is understood to fit within either category. But more importantly, these categories are matters of degree. They are not exclusive to particular individuals. Zealotry or xenophobia may from time to time characterize the positions of many people on particular questions. Both have characterized pursuit of the same substantive goals, the former in efforts to impose international standards, and the latter in efforts to block constraints on national or local standards.

There is one characteristic that zealotry and xenophobia have in common that is notable in the context of this analysis. Apart from ritual genuflection, neither manifests concern for the health of the international legal system as a whole.

Rarely if ever does one discern in the behavior of zealot or xenophobe both the caution and the vision of Chief Justice Charles Evans Hughes, when he expressed the confidence that out of “earnest study and comparison of opinions, and, in particular, out of the serious endeavor to understand intimately and correctly the conditions to be dealt with, the bases of national policies and the grounds of national fears, we may look for the gradual development of that enlightened conscience in international affairs from which the concepts of the international law of the future will proceed.”

The preoccupation of the zealot is the achievement of a particular substantive goal, be it protection of the environment, promotion of human

rights, or any one of a number of other worthy causes. The zealot uses international law in the same way as one would use municipal law: as a tool for the achievement of substantive objectives. There is nothing wrong with that. But what characterizes the zealot is a delight in abruptly pushing back the frontiers of what has been regarded as an appropriate role for international law and for courts in applying international law. It is not enthusiasm in itself that is the defining characteristic of the zealot, but impatience with the gradualism ordinarily associated with the development of law, coupled with a lack of concern for the systemic consequences of that impatience, including a possible xenophobic backlash. The zealot's response to what Justice Jackson called "the slow and evolutionary nature of all advancement in the field of law" is an appeal to the urgency of a substantive agenda.

The primary preoccupation of the xenophobe is the protection of national or local autonomy. That goal, in itself, is often a worthy one as well. But what characterizes the xenophobe is not the enthusiasm for protecting national or local autonomy as such, but delight in delegitimizing international law and obstructing its application. Consider, for example, the gleeful gusto of voluble attacks by some people on the UN, and by other people on the WTO.

The most well-known arena for arguments about the content of international obligations is the process of negotiating and concluding new treaties. This process affords some opportunity for, and imposes some constraints on, both zealots and xenophobes.

The reason for the constraints is that the treaty must survive a political process in national parliaments, in our case in a Senate or Congress that enjoys a substantial degree of political independence from the executive. Members of Congress tend to be cautious about new and intrusive types of international obligations. Thus the opportunities for zealots are circumscribed by the political exigencies of such scrutiny, while the fact of Senatorial or Congressional control over the assumption of the obligation provides at least a partial accommodation of the xenophobe's demand for autonomy.

There is, nevertheless, reason for concern that xenophobes are able to exert decisive influence over the process by taking advantage of the two-thirds majority required to approve treaties in our Senate. Let me take an

example with which, as you know, I am quite familiar. The UN Convention on the Law of the Sea sets forth the basic system for governance of some two-thirds of our planet. It is the result of intensive bipartisan diplomatic efforts by the United States for a quarter century. It now has 155 parties; the U.S. is the only major industrial maritime state that is not party to the Convention. Senate approval of the Convention has been urged by the major stakeholders: President Bush, the Joint Chiefs of Staff, the oil and gas industry, the shipping industry, the telecommunications industry, the fishing industry, marine scientists, major environmental and conservation groups, bar associations, human rights advocates, and a host of others. It is difficult to imagine a better example of what Aristotle praised as polity. And yet, at least to date, ideologically organized xenophobes have succeeded in blocking Senate approval.

This story poses a question that transcends this particular treaty: Has something gone amiss with our capacity to engage with international law?

Those who understand that courts and institutions are essential tools of the rule of law will discern a particular problem with the xenophobes' negative reaction to treaties that contain institutional decision-making or dispute settlement provisions. Such provisions make the precise contours of future obligations more difficult to predict. This uncertainty provides a fertile field for nurturing opposition to international institutions and tribunals.

In a recent hearing, a senator—a Rhodes scholar-- adverted to the right of parties to a treaty to submit certain unsettled disputes with each other to arbitration. The senator objected to this. He objected on the grounds that, if the parties to the dispute could not agree on an arbitrator to be named jointly, that person would be appointed by a specified appointing authority not under the control of the United States, an individual whom the senator presumed to be prejudiced against the United States because of formal association with the UN or otherwise.

Needless to say, that objection, if generalized, could render all binding third-party dispute settlement unacceptable. We have evidently come a long way from the observation of former President and Chief Justice William Howard Taft that the first world court -- the Permanent Court of International Justice, predecessor of the current International

Court of Justice – “is an American invention and ... derives its strength from American tradition.”

There are fewer than two hundred potential plaintiffs in a classic international dispute settlement system that is open only to states. That number increases substantially if private parties are allowed to sue. Moreover, the political constraints on a state considering a suit against another state, including its own conflicting interests in the underlying issues, are often irrelevant to private plaintiffs. Xenophobic nerves can be badly frayed if a treaty not only contains compulsory dispute settlement provisions, but those provisions permit private parties to sue states outside their own courts, as is the case for example under NAFTA.

In terms of the U.S. legal and political process, there is an irony here. I would imagine that most American lawyers believe that private parties should be able to sue states. Most of the treaties allowing such suits – typically in international arbitration -- are designed to advance the principles, enshrined in the Fifth Amendment of our Constitution, that no person shall “be deprived of ... property, without due process of law; nor shall private property be taken for public use, without just compensation.” Those treaties are a response to U.S. efforts over many decades to promote these principles internationally and to encourage foreign governments to accept them in a legally binding and enforceable instrument.

Yet our successful efforts in the 20th century are being watered down by the U.S. government itself in the 21st century. Why? Because the U.S. is itself being sued. It is unclear whether the new and remarkable attempts by the U.S. government to cut back on international protections for investment are the result of coherent policy choices, or reflect a certain tendency among some lawyers to regard policy as the servant of litigation.

We would all do well to bear in mind Justice Jackson’s observation on the meaning and the risks of the rule of law in international affairs: “It is futile to think, as extreme nationalists do, that we can have an international law that is always working on our side. And it is futile to think that we can have international courts that will always render the decisions we want to promote our interests. We cannot successfully cooperate with the rest of the world in establishing a reign of law unless we are prepared to have that law sometimes operate against what would be our national advantage.”

Zealots too readily assume that we are prepared to take those risks in order to advance their substantive agenda. Xenophobes too readily assume that the risks are too great.

A further complication in our engagement with treaties is introduced by the question of whether a treaty is self-executing, namely whether it is directly enforceable in actions brought in state and federal courts. Although Article VI of the Constitution provides that treaties shall be the supreme law of the land, and that judges in every state shall be bound thereby, American courts have long drawn a distinction between treaty language intended to lay down a rule of decision to be applied directly by the courts, and treaty language suggesting an executory contract that requires implementing legislation.

Of late, there has been a tendency in the Senate to declare treaties non-self-executing in the resolution of advice and consent. It is not clear whether the perceived provocation in this story is the treaty, or litigation by activist groups, or what some perceive to be activist judges. Be that as it may, it is instructive that this practice emerged as part of a package that included other unfortunate reservations and declarations, a package designed to deflect arguments against Senate approval of a basic human rights instrument modeled on our own Bill of Rights and legal traditions—the Covenant on Civil and Political Rights. Many people believe the trade-off was worth it; they may be right. But we need to remember that the price of Senate approval did not concern just one treaty, but entailed a change in our treaty practices and, as a practical matter, a change in the role of our courts under the Supremacy Clause of the Constitution.

We also should bear in mind that greater, albeit still limited, participation in multilateral negotiations is being accorded non-governmental organizations (so-called NGO's). This development is said to reflect the values of transparency in government, the same values that inform Florida's sunshine law, for example. While many of the effects of NGO participation in multilateral treaty negotiations may be widely regarded as benign and helpful, this development is viewed by some as affording zealots direct access to the negotiating process. At least in some measure, this problem may have affected perceptions of the Kyoto Protocol and the Rome Statute of the International Criminal Court.

Perhaps too little attention has been paid to this problem. A vision of the international negotiating process fashionable among some zealots suggests that NGO's have greater legitimacy than representatives of democratically elected governments. Quite apart from the extraordinary assumptions underlying that view, its effect can be to encourage outcomes unlikely to survive scrutiny by national parliaments. This in turn may provoke ritualized pronouncements by zealots that the outcomes do not require formal political approval -- because the outcomes are declaratory of customary law notwithstanding the absence of state practice to that effect, or because the outcomes reflect peremptory norms that spring fully formed from a mysterious source wholly dissociated from state practice and democratic process. This entire scenario may do less to further substantive outcomes than to provoke a xenophobic reaction, and indeed to add substantial credence to that reaction.

Worse still, such pronouncements may make national courts less willing to take international law seriously. Some of us were shocked when one of the most internationally minded courts in the nation -- the Second Circuit -- rendered a decision not long ago that all but mocked the instrumentalism of American professorial opinion on the content of international law. This should be a clear warning that unless there is a marked increase in scholarly restraint regarding pronouncements on the content of international law, we may find that customary international law arguments are either ignored by our courts or used mainly as adornments in their opinions, but are unlikely to influence a court's conclusion on any important legal issue.

The problem is even more severe in the context of high profile political issues. For example, without in any way questioning the duty of lawyers to represent their clients' interests, one wonders about the wisdom of the attempt by advocacy groups to use the Vienna Convention on Consular Relations in American courts and in the International Court of Justice as a weapon in their struggle against capital punishment in the United States. Their claim was a simple one, a claim that would be readily understood by any American overseas traveler or any American parent whose traveling offspring have become entangled in the criminal justice system in another country. The claim is that the United States violated the explicit requirements of the Vienna Convention when our detaining authorities failed to advise foreign citizens upon arrest or thereafter of

their right to consult their country's consular officials, and that this failure prejudiced the trial in which the penalty was imposed. The difficulty is that these Vienna Convention claims were often made for the first time on collateral review of the convictions, and most of them failed in our courts on grounds of procedural default, among other reasons.

But matters were not left there. Foreign states were persuaded to sue the United States in the International Court of Justice for violation of the Vienna Convention. Successive victories by Paraguay, Germany, and Mexico in these cases resulted in provisional orders that the United States delay executions until the Court decides the merits of the claims (which we did not obey), and final orders that the United States, by means of its own choosing, hold hearings to determine potential prejudice in these cases.

These orders have thus far been met with polite but unresponsive reactions by the U.S. Supreme Court. I should however note that we have yet to hear the final word in the Mexican case, where the Texas courts have rejected President Bush's determination that state courts are obliged to comply with the International Court's order, and where – to make full disclosure – I have joined with other international lawyers in an *amicus curiae* brief urging the Supreme Court to require that Texas comply with a binding judgment of the International Court in a case to which the United States was party.

A further reaction to these orders is that the United States has withdrawn its acceptance of the jurisdiction of the International Court of Justice in future disputes arising under the Vienna Convention. Moreover, by illustrating the potential intrusiveness of international litigation on high-profile domestic political issues, these orders may also have made the Senate less receptive to compulsory dispute settlement obligations in general.

These reactions in the United States not only fail to advance the campaign of the advocacy groups against capital punishment, but damage the broader interest in strengthening the rule of law in international affairs and our own engagement with international law and legal institutions.

Attempts to make imaginative use of the U.S. alien tort statute in federal courts tell a similar tale. Those attempts provoked efforts to eviscerate the statute. In the end the U.S. Supreme Court retreated to a

very exacting standard for establishing the existence of an actionable tort under international law.

These examples all illustrate an important aspect of the problem with our perceptions of and engagement with international law, namely the role of U.S. courts in applying and enforcing international law, especially in light of the direct and indirect role of independent advocacy groups in promoting and supporting domestic litigation. As the subject-matter scope of international law has increased, the effect has been greater intrusiveness with respect to matters previously regarded as purely domestic. This is the case, for example, with respect to human rights and environmental law. It is one thing for a domestic court to give effect to a rule of international law that entails only an episodic or marginal limitation on ordinary domestic rules, especially in cases that have significant foreign elements. It is quite another for a domestic court to decide to alter domestic law generally on the grounds of the court's appreciation of the import of vague or general treaty language or indeterminate norms of customary international law.

Increasingly broad international law claims in domestic litigation have prompted a series of negative reactions. As previously noted, the Senate is increasingly disposed to declare treaties to be non-self-executing, notwithstanding the absence of implementing legislation. In addition, courts seem to be more inclined to reach the same conclusion themselves. That reaction is not limited to the United States; the European Court of Justice has refused to give internal legal effect to the European Community's global trade obligations, and in so doing cited U.S. practice. Some writers have recently called into question venerable decisions of the Supreme Court, such as Oliver Wendell Holmes's opinion in *Missouri v. Holland* articulating broad substantive scope for the treaty-making power, or John Marshall's opinion in *Murray v. The Charming Betsy*, to which I adverted earlier, or even the notion that international law is part of our law. And there is evidence that the Supreme Court and other courts are applying restrictive standards to determinations of the content and effect of customary international law and at least some treaty obligations.

Viewed in historical perspective, there are two things wrong with the more extreme of these negative reactions. Both go to the heart of the dual engagement with international law that emerges from the Declaration of Independence. The first is that Americans take their rights and obligations

under international law seriously. The second is that Americans take their role in shaping international law seriously. Thus, for example, purporting to ignore the binding treaty rules set forth in the Geneva Conventions on the law of armed conflict on the grounds that they are “quaint” reflects neither element of the American tradition, and gratuitously puts our own armed forces at risk; it all but invites rebuke by the courts.

In principle, there is nothing wrong with trying to strike an appropriate balance regarding the role of domestic courts in applying international law. It is presumably common ground that we should continue to draw a distinction between the existence or assumption of an international obligation, on the one hand, and its application by domestic courts as a rule of decision, on the other. Failure to do so could invite narrow interpretations of existing international legal obligations and a reluctance to accept new legal obligations. This would hamper the conduct of the foreign relations of the United States and the achievement of our foreign policy objectives.

But at the same time, we must recognize the fact that national courts around the world are increasingly rendering opinions on the meaning and effect of global multilateral treaties and global rules of customary international law. The European Court of Justice, the judicial organ of the European Union with jurisdiction over an economy larger than that of the United States, is gradually assuming a more prominent role in interpreting and applying global treaties and global customary law as well. No serious lawyer believes that these judicial precedents interpreting rules that apply to all states, will have no effect on perceptions of the rights and obligations of the United States and its citizens under international law. America’s capacity to influence the future course of international law will be reduced if we pretend that we can ignore those decisions and if we remove ourselves and our own courts from the dialogue.

We are not required to yield to a new imperialism in which foreign states and their national courts determine the content of our international legal obligations. But that is exactly what will happen if we allow the xenophobes to hamstring the political branches and to silence our judges. And it is not enough to simply say we oppose xenophobia and the zealotry on which it thrives. We need to be more careful, in our scholarship and in our advocacy, to tend to the international legal system itself.

It bears repeating that the task before us is to concentrate on building a robust international legal system that is responsive to our needs and those of others, and that is equal to the challenges of the future. This will require much discipline and determination.

But it also demands self-restraint. Let us recall the counsel of that resourceful house guest of Aaron Burr and loyal friend of Alexander Hamilton: Charles Maurice de Talleyrand-Périgord.

In the words of Talleyrand:

Surtout pas trop de zèle!

Above all, not too much zeal.

Thank you.

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